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IN THE

Supreme Court of the United States

October Term, 1955

No. 145

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* HENRIETTA GADSON, on behalf of WILLIE MORGAN,

Petitioner,

AGAINST

JOHN E. HOY, Sheriff, County of Westchester,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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No. .....

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.*
HENRIETTA GADSON, on behalf of WILLIE MORGAN,
Petitioner,

AGAINST

JOHN E. HOY, Sheriff, County of Westchester,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the United States Supreme Court:

Petitioner herein prays for a Writ of Certiorari to review the order of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, affirming the order of the Supreme Court of the State of New York, County of Westchester.

Opinions

The Court of Appeals of the State of New York on April 28, 1955 denied petitioner's application for leave to appeal and did not render any opinion. A copy of the order denying said leave to appeal is appended hereto.

The Memorandum opinion of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, is appended hereto and is unofficially reported at 138 N. Y. Supp. (2d) 704.

The opinion (154-158) and order (7-12) of the Supreme Court, Westchester County, are appended to the Record on Appeal in the Appellate Division of the Supreme Court, which Record on Appeal is submitted herewith. Said opinion is not reported.

Jurisdiction

The jurisdiction of this Court is invoked under Title 28, U. S. C. §1257, subdivision 3, in that the affirmed decision of the Supreme Court, Westchester County, deprived the petitioner of a substantial right guaranteed under the VIIIth and XIVth Amendments to the United States Constitution.

The order of the Appellate Division of the Supreme Court sought to be reviewed herein was made and entered on the 21st day of March, 1955, which order unanimously affirmed the order of the Supreme Court, County of Westchester, made on the 20th day of August, 1954, and entered on the 8th day of September, 1954.

Said Appellate Division of the Supreme Court of the State of New York is the highest State Court in which a review could be had.

Leave to Appeal to the Court of Appeals of the State of New York was denied on the 28th day of April, 1955.

Questions Presented for Review

1. Does not the scope of inquiry by Writ of Habeas Corpus encompass the fact question of cruel and

unusual punishment in rendition proceedings under the VIIIth and XIVth Amendments to the United States Constitution?

2. Does jurisdiction attach in rendition proceedings when the papers annexed to the requesting Governor's demand are not properly exemplified?

3. Does not an illegal confinement result from the application of laws which discriminate against one segment of the citizenry on the basis of race and age where that confinement relates to institutions supported and maintained by public funds.

Constitutional Provisions and Statutes Involved

UNITED STATES CONSTITUTION

VIIIth Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

XIVth Amendment: "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

NEW YORK STATE STATUTES

§*830, Code of Criminal Procedure*: "No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was

present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, except in cases arising under section eight hundred and thirty-three or section eight hundred and thirty-four, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon, or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken terms of his bail, probation or parole. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand."

§*329, Civil Practice Act*: "Where a transcript, exemplification or certified copy of a record or other paper, is declared by law to be evidence, and special provision is not made for form of the certificate, in the particular case, the person authorized to certify, must state in his certificate that it has been compared by him with the original and that it is a correct transcript therefrom and of the whole of the original."

SOUTH CAROLINA STATUTES

§*2017, 1942 Code of Laws*: "When any white boy between his 12th and 17th birthday shall be indicted

for any crime, before he is tried, by consent of his parents or guardian or person having lawful custody of him, the judge or magistrate before whom he is indicted may commit such boy to the industrial school for training and education, or if after trial and conviction in lieu of sentence for punishment of such crime, the presiding judge or magistrate may commit such boy to said industrial school until released by order of the South Carolina penal board."

§*2021, 1942 Code of Laws*: "The board of directors of the state penitentiary is hereby authorized and required to set apart so much of the state farm, in the county of Lexington, as may be necessary for a reformatory, exclusively for colored boys. The board shall also provide suitable buildings and stockade for the safekeeping and comfort of persons sentenced thereto.

The board of directors of the penitentiary is authorized to use any moneys on hand, or that may accrue out of the profits of the state penitentiary, to defray the expenses incurred in providing such buildings and stockade and other appurtenances to the state reformatory farm.

The board of directors of the penitentiary shall place in the reformatory all male criminals, other than white boys, under 16 years of age, but not under age of 12, who shall be legally sentenced to said reformatory on conviction of any criminal offense in any court having jurisdiction thereof and punishable by imprisonment in the state penitentiary. The discipline to be observed in the said prison shall be reformatory, and the warden shall have power to use such means of reformation, consistent with the improvement of the inmates, as may

be prescribed by the board. The board shall provide for the instruction of the inmates in morals as well as useful labor."

Statement of the Case

(References Are to State Record Folios)

The prisoner, Willie Morgan, was arraigned on an information charging him with being a fugitive from justice in the State of South Carolina on May 5, 1954 in the County Court, Westchester County, after said prisoner had voluntarily surrendered himself to the local police authorities in White Plains, New York. Upon arraignment, bail was set, and the prisoner remanded to await the requisition of the Governor of South Carolina and issuance of the Warrant of the Governor of New York. On May 26, 1954, the prisoner was arraigned in said County Court on the Warrant of the Governor of the State of New York issued by virtue of the Uniform Criminal Extradition Act of the State of New York (79-87). An adjournment was granted for purposes of enabling the relator to test the validity of the Governor's Warrant by Writ of Habeas Corpus. On the 7th day of June, 1954 a Writ of Habeas Corpus was allowed returnable on the 18th day of June, 1954, in the Supreme Court, Westchester County (13-15). The basis for the allowance of said writ was the petition of the prisoner's sister, Henrietta Gadson, which petition alleged that the prisoner was being held in confinement in violation of the Laws of the State of New York and the United States Constitution (17-30). On the 18th day of June, 1954, pursuant to said Writ the Sheriff of Westchester County produced the prisoner and made his return as required (34-35; 76-153).

The grounds alleged in the petition for the allowance of the Writ of Habeas Corpus were as follows:

A. That the demand of the Governor of South Carolina was not in compliance with §830 of the New York State Code of Criminal Procedure and does not exemplify the supporting papers annexed to the demand (22).

B. That the prisoner's sentence and confinement in South Carolina was discriminatory and violative of the United States Constitution in that the prisoner being a Negro was sentenced to the penitentiary or County Public Works, whereas if the prisoner had been other than a Negro the right to confinement in a State Industrial School would have been available (23).

C. That the prisoner's life was in jeopardy in that overt acts of cruel and unusual punishment accompanied by threats upon his life had been made by the South Carolina Prison Guards of the Calhoun County Chain Gang (25).

Upon the hearing the return was made at which time the petitioner objected to the sufficiency of the Requisition of the Governor of South Carolina and supporting papers (36-42). The grounds relied upon were that §329 of the New York Civil Practice Act sets forth the manner in which exemplied copies are declared to be evidence and the supporting papers annexed were not exemplified as required. Decision was reserved and by opinion the objection was overruled (155-157). That as to the other points raised by the petition, the Court refused to take jurisdiction and permit evidence in support of the discriminatory aspect of the South Carolina sentence (65), and further refused to allow testimony in support of the

allegation of cruel and unusual punishment (69). Petitioner duly excepted to each of these rulings (66; 70). Inasmuch as the Court had reserved decision on the exemplification question and had refused to hear evidence in support of the other allegations no fact question was determined by the Court, only questions of law.

All questions of law were resolved against the petitioner and the Writ of Habeas Corpus was dismissed (7-12; 154-158) by order made on August 20, 1954 (7-12).

A Notice of Appeal was duly filed to the Appellate Division of the Supreme Court, Second Judicial Department (4-6). The appeal was taken from "each and every part of said order" (6), which brought up for timely and proper review by the appellate court all of the matters objected to by the petitioner in the lower court proceeding, including the federal questions herein involved. The Appellate Division by order made and entered on March 21, 1955, a copy of which is appended hereto, unanimously affirmed the order of the lower Court.

Thereafter petitioner applied to the New York State Court of Appeals for leave to appeal from the decision of the said Appellate Division. On April 28, 1955, the said motion for leave to appeal was denied.

Reasons for Granting Writ

I. The Scope of Inquiry Under Habeas Corpus.

In ruling that evidence of cruel and unusual punishment in the demanding State was not pertinent to the issues raised (69), the State Court, as a matter of law, precluded the petitioner from substantiating the claim that the prisoner's life was in jeopardy (25). This holding is contrary to the guarantee contained in the

VIIIth Amendment to the United States Constitution which has been held applicable to State action under the due process clause of the XIVth Amendment. *Francis* v. *Resweber*, 329 U. S. 459; *Screws* v. *U. S.*, 325 U. S. 91; *Johnson* v. *Dye*, 175 F. (2d) 250, rev'd. on other grounds, 338 U. S. 86; *Palko* v. *Conn.*, 302 U. S. 319.

Further, the question of probable treatment en route to the demanding State is germane to the habeas corpus proceeding and that factor should be a consideration for the renditing State. *Ross* v. *Middlebrooks*, 188 Fed. (2d) 308, rev'g. 88 Fed. Supp. 943; Cert. Den. 342 U. S. 862.

The scope of inquiry under habeas corpus has extended to the fact question of cruel and unusual punishments as well as the danger of the prisoner being deprived of life without due process of law. *Johnson* v. *Dye, supra; Jackson* v. *Ruthazer*, 181 Fed. (2d) 588, Cert. Den. 339 U. S. 980; *Peo. ex rel. Jackson* v. *Ruthazer* (N. Y.), 196 Misc. 34, aff'd. 276 App. Div. 832, leave to appeal denied, 300 N. Y. 762; *Peo. ex rel. Reid* v. *Warden*, 63 N. Y. S. (2d) 620 (not officially reported).

II. The Demand of South Carolina Was Defective and Jurisdiction to Rendite Did Not Attach.

The purported exemplification annexed to the requisitioning papers of South Carolina do not conform to §329 of the New York Civil Practice Act in that it fails to state that it has been compared by the certifying officer with the original and that it is a correct transcript of the original.

The fact that the South Carolina Executive issued his requisition authenticating the papers, and the New York Governor issued his warrant thereunder in no way excused the failure to meet the statutory requirements,

which are jurisdictional and therefore fatal. *Peo.* v. *Bessinger*, 273 N. Y. App. Div. 19; *Corkran* v. *Hyatt*, 172 N. Y. 176, 188; *Lee Won Sing* v. *Cottone*, 123 F. (2d) 169.

When an official fails to attest to his act by exemplification or certification then it should not be considered an official act.

III. An Illegal Confinement Resulted From the Application of Laws Discriminatory As to Race and Age.

The prisoner herein is a Negro who was 16 years of age at the time of his alleged commission of the crime charged. The sentence annexed to the requisitioning papers (108) shows that confinement was in the Penitentiary or the Calhoun County Public Works.

An examination of §2017 and §2021 of the South Carolina Statutes reveal that if the prisoner had been white he could have been committed under §2017. However, inasmuch as he was a Negro and over 16 years of age then confinement had to be in the Penitentiary or County Public Works. It is to be noted that under §2021, although the section is mandatory on the board of directors of the penitentiary, if the Negro has passed his 16th birthday he cannot receive reformatory treatment, whereas under §2017 the magistrate or judge has the power to commit a white boy to the Industrial School as long as he has not passed his 17th birthday.

This Court recently destroyed the "separate but equal" doctrine in public education. *Brown et al.* v. *Board of Education of Topeka et al.*, 347 U. S. 483, 74 S. Ct. 686. The opportunity of public education was held to be a right, which must be available to all on equal terms. It

is logical to assume that the moulding of the future of a 16 year old adolescent, charged with a crime, will be dependent upon the manner of confinement. He should be accorded an equal opportunity under the law in determining whether he receives reformatory or penitentiary treatment. This equal opportunity should not be dependent upon any statute which discriminates as to race or age. Such a discriminatory statute should be held unconstitutional.

As a result of these obvious discriminatory South Carolina statutes the prisoner was deprived of a constitutional right and the statutes are violative of the United States Constitution in that they favor one segment of the South Carolina citizenry on the basis of color and age insofar as an institution supported and maintained by public funds is concerned.

Conclusion

It is respectfully submitted that the grave questions involved in the within proceeding call for hearing and resolution by this Court and that the petitioner's application for a Writ of Certiorari herein should be granted so that the points discussed herein may be adequately presented to this Court and a full argument of the same had.

Respectfully submitted,

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APPENDIX

Order Denying Leave to Appeal to the Court of Appeals

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall, in the City of Albany on the twenty-eighth day of April A. D., 1955.

Present, HON. ALBERT CONWAY,
Chief Judge, presiding.

Mo. No. 186.

THE PEOPLE &c. ex rel. HENRIETTA GADSON, on behalf of WILLIE MORGAN,

Appellant,

vs.

JOHN E. HOY, Sheriff, County of Westchester,

Respondent.

A motion for leave to appeal to the Court of Appeals and for a stay in the above cause having been heretofore made upon the part of the appellant herein, and papers having been duly submitted thereon, and due deliberation had:

ORDERED, that the same motion be and the same hereby is denied.

/s/ GEARON KIMBALL
Deputy Clerk

SEAL

Order of Affirmance of the Appellate Division of the Supreme Court

ORDER ON APPEAL FROM ORDER.

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn on the 21st day of March, 1955

Present—HON. JOHN MACCRATE,
Acting Presiding Justice
" FREDERICK G. SCHMIDT,
" GEORGE J. BELDOCK,
" CHARLES E. MURPHY,
" HENRY L. UGHETTA,
Justices

THE PEOPLE OF THE STATE OF NEW YORK, ex rel. HENRIETTA GADSON, on behalf of WILLIE MORGAN,
Appellant,

vs.

JOHN E. HOY, Sheriff, County of Westchester,
Respondent.

The above named Henrietta Gadson, on behalf of Willie Morgan, the relator in this proceeding having appealed to the Appellate Division of the Supreme Court from an order of the Supreme Court entered in the office of the Clerk of the County of Westchester on the 8th day of

September, 1954, dismissing writ of habeas corpus and remanding Willie Morgan to custody, herein, and the said appeal having been argued by Mr. Curtis F. McClane of Counsel for the appellant and argued by Mr. Miles B. Suchin, Assistant District Attorney, of Counsel for the respondent, and due deliberation having been had thereon, and upon the opinion and decision slip of the court herein, heretofore filed;

It is Ordered that the order so appealed from be and the same hereby is unanimously affirmed.

Enter:

JOHN J. CALLAHAN
Clerk

Opinion by Appellate Division of the Supreme Court, Second Judicial Department

People ex rel. Gadson, ap, v. Hoy, res—Appeal by relator from an order dismissing a writ of habeas corpus and remanding Willie Morgan to custody. Order affirmed. In our opinion the provisions of section 329 of the Civil Practice Act are inapplicable to a demand in extradition proceedings and the papers are sufficiently authenticated if they comply with the provisions of section 830 of the Code of Criminal Procedure (cf. People ex rel. Levin v. Warden of Women's Prison, 188 Misc., 307, 309, aff'd 271 App. Div. 951; Lee Won Sing v. Cottone, 123 F., 2d, 169, 172; Ex Parte Paulson, 168 Ore., 457; Wilson v. Turner, 168 Kan., 1). We are also of the opinion that the question of the violation of the fugitive's constitutional rights in the demanding state may not be heard or determined in this proceeding (People ex rel. Johnson v. Ruthazer, 198 Misc., 1044, aff'd 278 App. Div., 905; Sweeney v. Woodall, 344 U. S., 86; Johnson v. Matthews, 182 F., 2d, 677, certiorari denied 340 U. S., 828; cf. People ex rel. Higley v. Millspaw, 281 N. Y., 441, 445).